Responsiveness Summary
State Pollutant Discharge Elimination System
Permit No. NY0272078, DEC # 8-9908-00210/00005
STAMP Sewer Works, Inc.
ONSITE STAMP WWTF
September 2022

Background

The New York State Department of Environmental Conservation (NYSDEC or the Department) issued a final State Pollutant Discharge Elimination System (SPDES) permit for the STAMP Sewer Works, Inc. wastewater treatment facility (WWTF) to be located at the Western New York Science and Technology Advanced Manufacturing Park (STAMP) sponsored by the Genesee County Economic Development Center (GCEDC) in the Town of Alabama, Genesee County with a portion of the force main and outfall in Town of Shelby, Orleans County. The final permit was developed as a new permit pursuant to 6 NYCRR Part 750 following receipt of the SPDES Form NY-2C permit application outlined in the final Fact Sheet. NYSDEC provided notice that a draft SPDES permit was available for public review in the *Environmental Notice Bulletin* on August 4, 2021, and in the Daily News in Batavia, New York on August 10, 2021 (the "draft permit"). The public comment period required by the State Uniform Procedures Act closed on September 3, 2021. This Responsiveness Summary responds to comments received by September 3 from the Village of Medina and Town of Shelby and subsequently[1] from the Tonawanda Seneca Nation and the United States Environmental Protection Agency, in the following correspondences:

Part	Affiliation	Name	Dated
1	Tonawanda Seneca Nation (TSN)	Chief Roger Hill Council of Chiefs	10/22/2021
2	Tonawanda Seneca Nation (TSN), with Exhibit of Declaration of Barry Sulkin	Christine G. Abrams, Office Administrator, on behalf of the Council of Chiefs	1/13/22
3	Village of Medina and Town of Shelby	Michael Sidari, Village Mayor and Jeff Smith, Town Supervisor	9/2/2021
4	United States Environmental Protection Agency	Joshua Kogan, P.E.	1/11/22[2]

[1] STAMP is adjacent to the federally recognized reservation territory of TSN. NYSDEC hereby offers its responses to comments received after September 3, 2021, in consideration of the consultation processes between NYSDEC and TSN about STAMP matters under NYSDEC's Commissioner's Policy 42 and facts and circumstances related to the WWTF SPDES application.
[2] Received pursuant to a 1975 Memorandum of Understanding with NYSDEC and 40 CFR 123.44.

As required by 6 NYCRR 621.10(e), NYSDEC prepared this Responsiveness Summary (RS) to address the comments received on the draft permit. The comments and NYSDEC's responses have been organized in parts numbered 1 through 4 based on the four comment correspondences identified in the chart above. The full text of these comment correspondences is included in the Appendix to this RS.

Part 1. TSN Comments – Received on October 22, 2021

TSN Comment: This segment of Oak Orchard Creek [which would receive the permitted discharge] is listed on New York's Final 2018 Section of 303(d) List as impaired waterbody for Phosphorus, meaning that Oak Orchard Creek is currently not meeting its water quality standards relative to Phosphorus. The Clean Water Act (CWA) prohibits issuance of a permit to "a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards." 40 C.F.R. § 122.4(i). (NYSDEC also received similar comment about phosphorus in later correspondence from TSN.)

DEC Response: NYSDEC made changes to the final permit and fact sheet in response to this comment. Specifically, the final SPDES permit includes a 0.2 mg/L (milligrams per liter) total phosphorus[3] effluent limit (rather than the 0.5 mg/L total phosphorus effluent limit in the draft permit) and the final fact sheet includes information about the Department's review of the NYSDEC July 1, 2017 "Oak Orchard Creek Biological Stream Assessment" (the BSA) in relation to this more stringent permit limit.

One way that NYSDEC works to prevent threats from chemical contaminants to the State's water resources is by regularly monitoring and evaluating the water quality of its streams and using that information to guide NYSDEC permit (and other) determinations. The BSA is this type of Department assessment; to evaluate Oak Orchard Creek, the BSA relies on biological and chemical data gathered from the stream. The BSA also provides the basis for the Final 2018 New York State Section 303(d) List categorization of Oak Orchard Creek as impaired for phosphorus.

Under the State's stream regulations at 6 NYCRR Part 847 and Part 701, Oak Orchard Creek is a Class C waterbody; its best use is fishing (6 NYCRR Part 701.8). The applicable narrative water quality standard (6 NYCRR 703.2) limits phosphorus in the effluent discharge to, "None in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages." (There is no numeric water quality standard for phosphorus for a Class C waterbody at this time.) In accordance with the NYSDEC guidance document "Technical and Operational Guidance Series (TOGS) 1.3.6, Phosphorus Removal Requirements for Wastewater Discharges to Lakes and Lake Watersheds", December 1988 Edition, the draft permit included a phosphorus concentration effluent limitation of 0.5 mg/L for the STAMP Sewer Works, Inc. WWTF, a

[3] Relative to phosphorus in a water body, the term "phosphorus" is commonly used to indicate "total phosphorus", a measurement of all the forms of phosphorus in the water. Thus, the RS uses these two terms interchangeably.

new discharger. After receiving the above comment, NYSDEC also reviewed the BSA concerning the basis and magnitude of the stream impairment and to identify whether a change to the proposed limit was appropriate to protect water quality.

Phosphorus effects waterbodies uniquely due to the varying assimilative capacity (i.e., ability of a water body to accept waste without harm to itself or its users) in aquatic environments. Therefore, the BSA considered more than one type of information to assess Oak Orchard Creek's assimilative capacity, including dissolved oxygen levels, excess growth of algae, weeds, slimes, and other aquatic vegetation, the condition of resident aquatic life (macroinvertebrate community), and excess turbidity, among others, to determine the impact that phosphorus and other contaminants may be having on the stream.

The STAMP development site is in the upper southwestern portion of the Oak Orchard Creek Watershed. While the BSA gathered data from 12 in-stream watershed locations to evaluate the entire watershed, the BSA assessment of a stream location in the Town of Shelby (i.e., ORCH-21.6 or Shelby Site) is especially relevant to NYSDEC's review of the proposed WWTF. The Shelby Site is less than a mile upstream from the proposed WWTF outfall to Oak Orchard Creek and downstream of the Shelby Dam. [Impoundment (i.e., Dam)-affected sites can exacerbate the effects of nutrients like phosphorus in a stream, due to alteration of natural flow regimes.]

The BSA designates aquatic life at the Oak Orchard Creek Shelby Site as moderately impacted. Therefore, in accordance with the New York State Department of Environmental Conservation Consolidated Assessment and Listing Methodology[4], the stream's best use (i.e., fishing) is impaired. During review of the BSA regarding the permit in question, NYSDEC especially noted that the total phosphorus that NYSDEC measured during Shelby Site water chemistry evaluation for the BSA was approximately 250 µg/L (or 0.25 mg/L). NYSDEC determined that a permit limit lower than the background (i.e., in-stream) concentration of phosphorus would be more protective of water quality as long as WWTF phosphorus removal processes and technology could achieve a limit lower than current conditions in the stream segment. Thus, the final permit includes a total phosphorus effluent limit of 0.2 mg/L, which is achievable based on the wastewater treatment technology proposed for the WWTF, and is lower than the existing in-stream phosphorus concentration of 0.25 mg/L.

Additionally, since any discharge would increase the mass loading to the stream segment, the Department evaluated whether decreased phosphorus loading to the watershed from the planned development of the STAMP site (which currently is primarily agricultural) as a manufacturing park would offset the added phosphorus loading from the WWTF discharge. The Department calculated that phosphorus loading to the watershed derived from halting agricultural use of the STAMP site will decrease the loading by 2.4 lbs./d

[4] https://www.dec.ny.gov/docs/water_pdf/calmmay2021.pdf. NYSDEC uses this Consolidated Assessment and Listing Methodology (CALM) to assess the quality of the State's waters relative to the attainment of NYSDEC water quality standards and to report assessment results to the United States Environmental Protection Agency.

(pounds per day), while the proposed operational phases of the WWTF permit (0.25 MGD, 0.5 MGD and 1.0 MGD) will increase phosphorus loading to the watershed by 0.42 lbs./d, 0.83 lbs./d, and 1.7 lbs./d, respectively. Thus, the phosphorus load from the STAMP site would be 1.4 to 5.7 times greater if it remained as currently used (primarily agricultural) than the phosphorus load to be contributed by the WWTF discharge. Therefore, the WWTF discharge will not contribute to the phosphorus impairment of the watershed.

In addition to the requirements in the final permit, the STAMP Sewer Works, Inc. WWTF also must obtain coverage under the SPDES General Permit for Stormwater Discharges Associated with Construction Activity (GP-0-20-001, or CGP). The CGP requires the permittee to develop a Stormwater Pollution Prevention Plan (SWPPP) that includes post-construction stormwater management practices designed and installed in accordance with the 2015 NYS Stormwater Management Design Manual to reduce the volume of runoff through infiltration, groundwater recharge, reuse, recycle and/or evaporation/evapotranspiration (i.e., runoff reduction practices). These practices are expected to reduce stormwater discharges and the associated pollutants, including total phosphorus, from the most frequent storms (90th percentile or one year), in comparison to runoff due to current land use at the STAMP site (more than 80% agriculture). The combination of runoff reduction practices and the sizing criteria contained in the 2015 New York State Stormwater Management Design Manual are protective of water quality.

Part 2. TSN Comments – Received on January 13, 2022

2A. General Comments from January 13, 2022

2A1. **TSN Comment:** TSN is concerned about the impact of wastewater treatment from WWTF noise or odor.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

There are regulatory provisions that the permittee must abide by, which address the concerns expressed in this comment. Pursuant to 6 NYCRR 750-2.8(a)(2), "[t]he permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit." Furthermore, 6 NYCRR 750-2.8(a)(6) specifically requires that the permittee operate the facility "in such a manner as to minimize odors and other nuisance conditions to a degree that is achievable when compared to standard practices for operation." Also, 6 NYCRR 211.1 states that, "No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others."

Relative to residual (sludge) management, the permittee must also comply with 6 NYCRR 750-2.8(e), i.e., "Proper storage or disposal shall prevent creation of nuisance conditions or the entry of such materials into State waters and shall be in a manner approved by the department." Furthermore, the permittee has an obligation to design the sludge storage tanks in accordance with standards accepted by the Department (6 NYCRR 750-2.10(g)), such as *Recommended Standards for Wastewater Facilities* (Ten State Standards) where design guidance is reviewed in Chapter 80 under the heading Sludge Processing, Storage, and Disposal. In particular, Chapter 89.11 states that *"Sludge storage facilities shall be provided at all mechanical treatment plants. … The design shall provide for odor control in the sludge storage tanks…including aeration, covering, or other appropriate means."* During the WWTP design review the NYSDEC will ensure that the WWTP design conforms with this chapter and other applicable design criteria in the design standards. It is anticipated, based on the draft Basis of Design Report, the treatment processes that have capacity to produce noise and odor are contained within structures which will eliminate impacts to neighbors.

Regarding potential noise from the WWTF, the State Environmental Quality Review Act record indicates that there should not be any impacts from noise during the operation of the WWTF. See Section 2, Item 16 of the August 5, 2022 Resolution of the Genesee County Economic Development Agency D/B/A Genesee County Economic Development Center Pursuant to the State Environmental Quality Review Act Concerning Certain Proposed Infrastructure Improvements to the Western New York Science and Technology Advanced Manufacturing Process Manufacturing Park, including an Amended SEQRA Negative Declaration [for Project known as Infrastructure Improvements to STAMP] which states, "Similarly, as all treatment processes are contained within structures, the WWTF is not anticipated to appreciably increase noise levels. Further, the WWTF will be centrally located on the STAMP Site, immediately north of the location of Project Gateway."

2A2. **TSN Comment:** TSN is concerned about the impact of wastewater treatment on the animals that freely travel on and around the Nation, including animals that Nation citizens hunt in the Big Woods, which lies downstream and less than a mile from the WWTF.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

DEC does not foresee any net negative impacts to local wildlife population from the construction or operation of the proposed WWTF.

Further, the treated effluent discharge from the WWTF will be conveyed by buried forcemain to the outfall to Oak Orchard Creek approximately nine miles north of the WWTF site, providing no opportunity to enter the TSN reservation territory or impact the wildlife in the vicinity of the WWTF.

Additionally, under 6 NYCRR 701.8, fishing is the best use of the Oak Orchard Creek, which also, "shall be suitable for fish, shellfish and wildlife propagation and survival".. As described in the *Permit Requirements* section of the fact sheet, the permit contains effluent limitations to ensure that the STAMP WWTF does not cause or contribute to a violation of water quality standards in the receiving water (i.e., that the permit is protective of Oak Orchard Creek) (ECL17-0501).

2A3. **TSN Comment:** TSN is concerned that accidental spillage, leaks or overflow from the WWTF could impact the Nation's waters or the plants, animals, or people.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

The permit does not allow these incidents to occur. Additionally, provisions to prevent spills and leaks from the WWTF are incorporated in the Department's regulations requiring WWTF design to treat peak facility flows, and to include redundancy in treatment processes and equipment, and backup power, among the other requirements of the State's accepted design standards (i.e., Recommended Standards for Wastewater Facilities [10 State Standards], TR-16 – Guides For the Design of Wastewater Treatment Works), which includes designing for peak flows, having redundancy in treatment processes and equipment, and backup power (6 NYCRR 750-2.8(a)(2)(ii) and 750-2.10). Further, if WWTF spills or leaks should occur, 6 NYCRR 750-2.7(f) requires the permittee to mitigate them and to report the incident (6 NYCRR 750-2.7(b)) and the NYSDEC would pursue appropriate follow up measures (e.g., mitigation/clean up requirements, enforcement, etc.).

2B. Specific Comments from January 13, 2022

2B1. **TSN Comment:** Oak Orchard Creek is an inappropriate discharge location for a new sewage treatment plant and future industrial discharges from the STAMP Site because the proposed Permit cannot legally authorize a new Phosphorus discharge into an impaired segment of Upper Oak Orchard Creek.

DEC Response: Please see the response under Part 1 above.

Also, the ECL and regulations at 6 NYCRR require any future industrial dischargers locating at STAMP to obtain a SPDES permit prior to any discharge and comply with all applicable regulatory standards, including those for water quality.

2B2. **TSN Comment:** The proposed discharges will overwhelm Oak Orchard Creek and transform the creek into an effluent dominated stream which would violate the State's water quality standards. Among other problems, effluent dominated streams often emit foul odors that make the water body "less desirable for recreational users" [quoting Sulkin Declaration] such as fishers or swimmers.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment. The final SPDES permit did not apply a mixing zone in development of the SPDES permit effluent limits. Review of the 7Q10 flow (lowest 7-day average flow that occurs, on average, once every 10-years) for the Oak Orchard Creek at the location of the discharge indicated that upon full build on the STAMP site (6 mgd/9.3 cfs), the stream discharge ratio to the 7Q10 would near a 1:1 dilution ratio, meaning there is no available assimilative capacity in the stream to apply a mixing zone. Since the effluent limits are set at 'end of pipe', with no mixing, the effluent discharge is protective of water quality for all flow conditions. The SPDES permit provides effluent limits and conditions NYSDEC developed to prevent a discharge that violates water quality standards and to protect the best uses of the receiving water (see *Permit Requirements* section in the fact sheet for information on permit limit development).

Regarding odor, the narrative water quality standard (6 NYCRR 703.2) applicable to Oak Orchard Creek, a Class C waterbody, limits "odor producing substances" in the effluent discharge to, "None in amounts that will adversely affect the … odor thereof, or impair the waters for their best usages." (There is no numeric water quality standard for odor producing substances for a Class C waterbody at this time.) See also the above response to comment 2A1.

In addition, NYSDEC has no reason to expect that the effluent will cause Oak Orchard Creek to flood. A technical analysis of the STAMP discharge to Oak Orchard Creek was performed by JM Davidson Engineering, D.P.C. (STAMP Discharge Analysis to Oak Orchard Creek, May 22, 2020). The engineer reviewed data from the USGS (United States Geological Service) Gage located in the Towns of Shelby and Medina and conducted a regression analysis of data in accordance with "USGS Magnitude and Frequency of Floods in New York", which presents techniques for estimating the magnitude and frequency of flood discharges, to compute the 10, 50, 100 and 500-yr peak discharge flows of 1,640, 2,200, 2,420, and 2,910 cfs, respectively.

The engineer also used the Hydrologic Engineering Center – River Analysis System (HEC-RAS) (version 5.0.7) to build a hydraulic model of Oak Orchard Creek from the Shelby Center Dam to the downstream end of John E. Butts Memorial Park in Medina. This model demonstrated that no structures were impacted by the existing 100-year flood elevations and both bridges were able to pass the 100-year event with freeboard. The proposed STAMP maximum discharge (6 mgd [or 9.3 cfs]) produces a 0.4% increase to the 100-year flood. A review of this flow increase was run in the model and resulted in a negligible effect on flood elevations.

2B3. **TSN Comment**: The permit's monitor-only approach for the first six months of the facility's operation fails to protect water quality and NYSDEC has provided no justification or evidence in the record explaining how this permit provision protects water quality or is necessary for operation of the facility.

DEC Response: In response to this comment, NYSDEC modified the permit to require that the effluent limitations must be met upon initial discharge.

Pursuant to 6 NYCRR 750-1.14(h), when necessary to "attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge" the permit may include a period of time for the permittee to meet SPDES permit effluent limitations upon initial construction. However, upon further review, the Department concludes that 6 NYCRR 750-1.14(h) does not apply, based upon the proposed treatment technology, and the permittee must meet effluent limitations upon authorization to discharge.

2B4. **TSN Comment:** The Permit's temperature limits and monitoring requirements fail to comply with the State law which states that New York's temperature water quality standard prohibits discharges that raise stream temperature more than 5 degrees higher than the temperature prior to the receipt of effluent. The Permit sets the temperature limit at 90F and requires compliance testing at the end of the treatment process, not in the stream. This approach fails to comply with the law.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

As required in 6 NYCRR Part 704.2, the permit contains conditions to ensure that the thermal discharges from STAMP are compliant with 6 NYCRR 704.1(a) for "the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water." Specifically, in accordance with 6 NYCRR 704.2(b)(1)(i), the permit includes a temperature effluent limitation of 90 degrees Fahrenheit because the receiving waterbody (Oak Orchard Creek) is not classified as a trout or trout spawning stream, which would be subject to more stringent water quality limits (for example, for temperature and ammonia). The discharge is treated sanitary wastewater, with no elevated heat load, therefore there is no reasonable potential to exceed stream temperature differential identified in 704. Parts 750-2.5(a)(2), (a)(2)(i), and (3) identify that a representative sample must be taken for the purpose of demonstrating conformance with permit limits. Compliance with permit limits is generally demonstrated prior to mixing in a receiving water. Temperature limits, if met at a representative sampling location on-site (which will be reviewed during the WWTP design review), will adequately demonstrate the limit will be met in-stream because there is no plausible basis to anticipate an increased temperature along the length of the outlet pipe.

2B5. **TSN Comment:** The Permit's dissolved oxygen monitoring requirements are insufficient and infrequent. The Permit must require dissolved oxygen monitoring in the water at the outfall site that will allow the agency "to determine compliance with effluent limitations and water quality standards that are or may be effected by the discharge." The Permit's current monitoring requirements fail to comply with the regulations because the monitoring location is approximately 9 miles from the receiving water.

DEC Response: Changes have been made to the permit in response to this comment.

As noted in response to comment 2B4, compliance sampling at a representative location on-site is consistent with 6 NYCRR 750 -2.5(a)(2), (a)(2)(i), and (3). Under 6 NYCRR 703.3, Oak Orchard Creek, as a Class C designated waterbody, must maintain a daily average Dissolved Oxygen (DO) not less than 5.0 mg/L and at no time shall the dissolved oxygen concentration be 4.0 mg/L.

Considering the potential dissolved oxygen loss along the pipe length, a dissolved oxygen effluent limitation of 7.0 mg/L has been added to the final permit, to ensure compliance with 6 NYCRR 703.3 at the outfall. Based on NYSDEC review, an oxygen depletion of 2.0 mg/L will not occur across the length of the outfall pipe. However, short term monitoring will remain in the permit to verify that the dissolved oxygen water quality standard is met in-stream.

2B6. **TSN Comment:** The Permit's Fecal Coliform and Chlorine limits do not protect recreation uses in Oak Orchard Creek. The Permit must ensure its Fecal Coliform and Chlorine limits protect water quality and recreational uses. The Permit sets Fecal Coliform levels at the criteria level without a margin of safety. This absence of a margin of safety is especially concerning because Oak Orchard Creek is a Class C stream which must be suitable for primary and secondary contact recreation.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

Concerning Class C fresh surface waters such as Oak Orchard Creek, 6 NYCRR 701.8 provides, "The best usage of Class C waters is fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival. The water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes."

The permit's fecal coliform effluent limitations were developed in accordance with 6 NYCRR 703.4 (b), 17-0301(5)(c), and TOGS 1.3.3, which promote statewide consistency in permit conditions and protection of water quality. Furthermore, the fecal limit in this permit is the same limit, applied to Class A, B and C waters, to be protective of the water quality standard and protective of primary and secondary contact recreation. In addition, most water quality standards, including that for fecal coliform, have a margin of safety or risk factor built into the derivation of the standard, so there is no need to account for additional margins when calculating effluent limits. Therefore, no changes have been made to the fecal coliform effluent limitations in response to this comment.

Concerning chlorine, the permit includes a limit for total residual chlorine (TRC), at the minimum level of detection to protect the receiving waters, Oak Orchard Creek, in the event that chlorination products are used at the WWTF (for example, for disinfection of the effluent prior to discharge). Furthermore, the Department does not anticipate that chlorine will be a contaminant of concern for the WWTF discharge because the applicant proposes to use ultraviolet disinfection to meet the fecal coliform permit limitations, not disinfection by chemical chlorination.

2B7. **TSN Comment:** The Phosphorus limit does not reflect the lowest achievable limits through implementation of widely available technology. The Phosphorus limit in the Permit does not reflect the lowest amount of Phosphorus that is technologically feasible at this proposed facility.

DEC Response: The proposed technology at the STAMP site for phosphorus removal is a combination of chemical addition and filtration using disc filters. This technology, as discussed in the response to Part 1 above, can meet a phosphorus limit (0.2 mg/L) which is lower than the limit (0.5 mg/L) in NYSDEC's phosphorus removal guidance, TOGS 1.3.6.

2B8. **TSN Comment:** The proposed wet well is too small for the proposed discharges. The wet well that will serve as a receptacle for effluent flowing from the wastewater treatment facility before moving into the 9-mile pipeline leading into Oak Orchard Creek only has a "relatively small volume of 60,000 gallons." The Applicant's plan to nevertheless pump 1 MGD of effluent into Oak Orchard Creek could very well lead to backed up sewage that would cause this small, overflowing wet well to leak. DEC must not approve the Permit with such high volumes of effluent or with such a small wet well.

Leaks or overflows from the wet well are of particular concern to TSN because of the well's close proximity to TSN's reservation territory. Leaked or spilled effluent from the wet well could potentially travel into the reservation territory, for instance through nearby hydrologically linked wetlands, and thereby harm TSN health or environment.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

In accordance with the SPDES permit Compliance Schedule, a discharge will not be authorized until the Department reviews and approves a complete Design report for the WWTF. Upon review of the WWTF report the Department will review that the proposed design flow can be conveyed satisfactorily through the proposed wet well design. NYSDEC has received a Design Report for the STAMP WWTP but has not yet completed review nor approved the Report. Prior to NYSDEC approval of the WWTF design, or any future STAMP tenant proposed treatment plant design, NYSDEC will review the wet well design for appropriate sizing and conformance with accepted design criteria for expected flows to be received (10 State Standards and the New England Interstate Water Pollution Control Commission [NEIWPCC] Guides for the Design of Wastewater Treatment Works, 2011 Edition, as Revised in 2016 [TR-16]). As identified in the response to comment 2A3 spill or leaks are not permitted at the WWTF and if they occur would violate the permit, related law, and regulation.

2B9. **TSN Comment:** The Permit provides for compliance monitoring at the end of the treatment works, not at the outfall. DEC should not issue the permit until the permittee explains to DEC how it plans to lawfully access the outfall in order to perform compliance monitoring and meet permit requirements.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

Compliance sampling at the end of the wastewater treatment process that is representative of the treated effluent discharge is consistent with 6 NYCRR 750-2.5(a)(2), (a)(2)(i), and (3) and conforms to how sampling at SPDES permits across New York State occurs.

2B10. **TSN Comment:** The Permit should require monitoring for PFOA and PFOS. DEC is in the process of finalizing guidance values for PFOA and PFOS in surface waters. The Permit should require monitoring for PFOA and PFOS, since these pollutants are regularly found in sewage. Further, because we do not know what kind of industrial facilities will be built at STAMP, the Permit should incorporate monitoring requirements for PFOA and PFOS to ensure these harmful pollutants are not introduced into Oak Orchard Creek.

DEC Response: NYSDEC did not change the final permit or fact sheet in response to this comment.

The In June 2021, NYSDEC published notice of the availability of a draft Permitting Strategy for Implementing Guidance Values for PFOA, PFOS, and 1,4 Dioxane (TOGS [Technical and Operational Guidance Series] 1.3.13), along with draft updates to TOGS 1.1.1, "Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations". GVs are currently draft.

PFOA and PFOS are relatively ubiquitous in the environment due to their historical widespread use and persistence. As the primary use has been in a wide variety of commercial and industrial products, NYSDEC will prioritize incorporation of the GVs for PFOA and PFOS for discharges of industrial wastewaters identified as "priority facilities", as identified in TOGS 1.3.13. The TOGS 1.3.13 does not preclude the use of PFOA and PFOS GVs at sources other than the industrial categories identified. If analysis determines a significant source of concern and/or contamination exist at a facility, the guidance may be applied. Again, TOGS 1.3.13 becomes effective when the GVs become effective.

Each STAMP tenant that discharges industrial process wastewater must obtain an individual SPDES permit for their discharge. The Department will develop each industrial tenant's SPDES permit to ensure that the water quality standards for Oak Orchard Creek are maintained. If a STAMP tenant industry uses materials that have a reasonable potential to violate water quality standards, appropriate effluent limits will be applied.

2B11. **TSN Comment**: DEC cannot issue the Permit without clarifying the identity of the applicant, the operator, and the owner of the facility.

All SPDES permits must contain "the discharger's name and legal status (corporate, individual, partnership or public)." First, the Joint Application Form lists "Genesee

Gateway Local Dev Corp/Genesee County EDC" as the applicant, and the property owner simply as "multiple." The permit application was transferred to "STAMP Sewer Works, Inc." and the Notice of Complete Application identifies STAMP Sewer Works Inc. but the Permit states that the applicant is STAMP Sewage Work Corp.

DEC must ensure that the Permit is issued to the proper entity. In addition, TSN seeks clarification on the relationship among STAMP Sewer Works, Inc., Genesee Gateway Local Dev Corp/Genesee County EDC, and the unnamed "multiple" property owners. The Secretary of State's website does not reflect any information regarding the identity of the Chief Executive Officer or any of the board of directors of STAMP Sewer Works, Inc. and the articles of incorporation are written to limit the liability of any corporate officers. Who is actually the owner and the operator of the facility and who will be responsible for constructing, operating, and maintaining the facility?

Resolving "the lack of clarity and consistency across the documents" [Sulkin Declaration] is important to the Nation for two reasons. First, it will help the Nation figure out whether or not the correct party applied for this permit. Second, whether the facility is regulated as a Publicly Owned Treatment Works (POTW) turns on the identity of the owner. If the facility is indeed a POTW, then the Nation may need to submit additional comments on the application to ensure that the facility adheres to that requirement.

DEC Response: Changes have been made to the permit in response to this comment.

NYSDEC issued the final SPDES permit to STAMP Sewer Works, Inc., the entity which applied for the permit and will operate (i.e., be the "discharger" from) the proposed WWTF (once it becomes operational.) STAMP Sewer Works, Inc. is legally responsible for all the actions authorized by the SPDES permit with which the regulations require the permittee to comply. See 6 NYCRR 750-2.1(e) ["The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application."]

Although the specifics of the formation of STAMP Sewage Works, Inc. are outside NYSDEC jurisdiction, the Department has no reason to doubt that the transferred permit application was appropriately submitted to NYSDEC by STAMP Sewer Works, Inc., and the permit appropriately issued to STAMP Sewer Works, Inc. by NYSDEC. Among other things, 6 NYCRR 750-1.6(f) requires that "A permit for a sewage disposal system or approval of a sewer extension serving or intended to serve more than one separately owned property shall be issued only to either a governmental agency, municipality, or sewage disposal corporation formed and regulated pursuant to article 10 of the Transportation Corporations Law." STAMP Sewer Works, Inc. was formed under the New York State Transportation Corporations Law and is a "sewage disposal corporation" as the term is used in 6 NYCRR 750-1.6(f). The certified copy of the January 11, 2021 Certificate of Incorporation of STAMP Sewer Works, Inc. under the New York State Transportation Corporations Law with filing receipt which the applicant provided to

NYSDEC and TSN during the application process states that, "The Corporation shall be a sewage works corporation under Article 10 and Section 122 of the Transportation Law of the State of New York."

Also, exhibits to this Certificate of Incorporation demonstrate that the Town of Shelby and the Town of Alabama (in which the sewage disposal system will be located) both consented to the formation of STAMP Sewer Works, Inc. by resolutions dated October 20, 2020, and September 16, 2020, respectively. Additionally, although NYSDEC received certain comments from the Town of Shelby and Village of Medina during the public comment period provided under New York State Uniform Procedures Law for the permit, no comments from any municipality indicated concern that STAMP Sewer Works, Inc. had applied for the permit or could become the permittee.

Further, the transfer application (by which the permittee replaced the earlier applicant on the SPDES application) identifies the transferee as "STAMP Sewer Works, Inc."; indicates the same entity will be the facility operator; also indicates that it, "seeks to be the legally responsible party for the operations or project development either authorized by or the permits identified above or proposed in the applications identified above" (i.e., the SPDES 2C application); and is signed on behalf of the transferee under penalty of perjury. Moreover, the permit application included the discharger's name and legal status (corporate, individual, partnership, or public as required by 6 NYCRR 750-1.7(a)(1).

Please also note that to the best of NYSDEC's knowledge, there is no entity named "STAMP Sewer Works Corp". NYSDEC's use of "Corp" rather than "Inc." in the draft permit that DEC provided to TSN on August 5, 2021 (and also otherwise made available to the public when the application became complete) was a clerical error.

2B12. **TSN Comment:** DEC cannot issue the permit without clarifying the identities of dischargers and the nature of their wastewater for any person or corporation that plans to send wastewater through the sewage treatment plant's treatment works or outfall pipe.

The applicant has failed to comply with the law by neglecting to provide the necessary information about the dischargers that will be using the facility. Specifically, the law requires that, "[f]or facilities that are not POTWs, but receive wastewater or storm water from other persons, [the permit application] information shall include the identity of each user of the treatment works." The Transportation Corporation law confirms that discharge pipes are considered a part of the sewage system.

The Permit claims that the "new plant would have an initial design capacity to accommodate an average flow of up to 1 million gallons per day of sanitary wastewater." However, it is not clear where this flow is actually coming from. The Permit claims the wastewater treatment plant would "serve the Science & Technology Advances Manufacturing Park (STAMP) and potential future domestic users in the Town of Alabama." There are currently no buildings or facilities constructed at the STAMP site that would be sending wastewater to the facility. The only facility currently approved and being

constructed is the Plug Power facility, but that facility is not listed as a user of the treatment works, nor is there any indication whether Plug Power will be sending only sanitary wastewater to the facility or if it will be sending process wastewater either through the treatment facility or through the facility's sewage pipes to Oak Orchard Creek. Thus, the applicant has not included the identity of any user of the treatment works, as required by regulation

This regulatory violation raises practical concerns. One prospective tenant proposes to manufacture polyethylene film on the STAMP site. The Nation would like to know whether harmful waste or byproducts of the manufacturing process will be discharged through the outfall pipe into Oak Orchard Creek. Information of this kind will also allow DEC to determine which technology-based limits apply to the facility.

There has been no showing that the proposed sewage treatment plant would have enough consistent flow through the facility to properly maintain the functioning of sewage works. The permit application fails to identify "each user of the treatment works" [Sulkin Declaration] and should therefore be denied until the time that there are identified users of the treatment works.

DEC Response: No changes have been made in response to this comment.

In the event a tenant in the industrial park has a process wastewater discharge to the force main, a complete SPDES permit application will be required from the tenant and an individual SPDES permit will be developed such that water quality standards are met at the point source discharge, prior to discharge to the wet well.

The WWTF must be designed to properly treat the design flow and lesser flows as applicable. Selection of certain treatment technologies can provide more latitude in treatment capability and the proposed selection of Sequencing Batch Reactors (SBRs) can provide for flexibility of during treatment of low flows. Review of the ranges of flows to be received and subsequent design information/details will proceed during the DEC's WWTF Design Report review.

2B13. TSN Comment: Approving a 6 MGD pipeline for future undisclosed discharges as part of an application for a sewage treatment plant that has not identified users is illegal and contrary to the Clean Water Act and public policy.

Approving the Permit and its 9-mile pipeline is pre-approving future industrial discharges.

DEC's approach of approving a pipeline with 6 MGD capacity with the intent of approving future undisclosed discharges to Oak Orchard Creek via a 9-mile pipeline undermines the Clean Water Act and its requirement to review and approve each proposed discharge individually and to allow public review and comment on proposed discharges.

If DEC approves this Permit -- which explicitly admits it is building this facility in order to build the pipeline to accommodate future industrial discharges it has not yet identified --

DEC is essentially pre-approving those future discharges into Oak Orchard Creek without disclosing the volume and nature of those discharges or explaining where the discharges are coming from. These facilities could be proposing to discharge harmful levels of pollutants into Oak Orchard Creek, but if they route their wastewater through the wastewater treatment facility, the Nation could be effectively precluded from objecting to those discharges. Allowing a small wastewater treatment plant with no identified users to build a large, long pipeline, the primary purpose of which is to convey industrial wastewater for facilities before they are built or even identified, is essentially pre-approving those discharges. By authorizing this permit while fully aware that this application does not represent the anticipated discharges, DEC has made these future discharges all but inevitable.

For this reason, this Permit is premature and must be denied. The Permit cannot be issued until there are identified users of the sewage system which includes both the treatment works and the pipeline. The Permit cannot pre-approve these future discharges and cannot condone building massive pipeline infrastructure to accommodate unknown future industrial discharges.

DEC Response: No changes have been made in response to this comment.

At this time, the STAMP Sewer Works, Inc. WWTF is the only discharger authorized to use the force main. The force main is designed for a potential future flow from potential industrial dischargers, in addition to the flow from the STAMP WWTF. The process wastewater from the industrial dischargers will not go through the STAMP WWTF but will be treated pursuant to a separately issued SPDES permit. After treatment, the process wastewater from the industrial dischargers will join the treated effluent from the STAMP WWTF in the wet well prior to being pumped through the force main to the outfall. See response to comment 2B12 about how a process wastewater discharge will have an individual SPDES permit developed.

2B14. **TSN Comment:** DEC's plan to issue separate permits for future industrial facilities to discharge into the facility's wet well would make enforcement impossible.

DEC's stated intention to allow multiple STAMP tenants to discharge from Outfall 001 would make enforcement of water quality violations near impossible and the proposal is therefore unreasonable. DEC must clarify that all present and future discharges from a single outfall will be covered under a single permit. The Notice of Complete Application explains that "[i]f STAMP tenants desire to use this project outfall pipe for any future industrial discharge, they first would be required to submit a new SPDES permit application, subject to SEQR and full public notice requirements, and to receive their own individual SPDES permit, specific to their industrial process, prior to authorization to discharge." However, the Permit states, "[l]imits may be reassessed upon a request to add new dischargers, either to the STAMP WWTP, or for a separate individual permit but whose discharge combines with the discharge of this permit and is discharged to Outfall 001."DEC's inconsistent language here deprives the Nation of its ability to critically

evaluate what exactly is being proposed for this Permit and for the STAMP site as a whole.

Furthermore, it would be unreasonable for DEC to issue multiple SPDES permits authorizing discharge through a single outfall. To do so would make it "extraordinarily difficult" for DEC, the Nation, or concerned individuals to enforce the terms of the several permits if there was an end-of-pipe violation. DEC has an obligation to the Nation to provide examples of whether and how it has ensured compliance out of a similarly shared outfall elsewhere in New York.

What is clear is that if DEC's plan is for future industrial facilities to discharge at Outfall 001 using the pipeline, those discharges must be incorporated into this Permit, which must be reopened prior to authorizing any additional discharge. The Permit Applicant must be the single entity liable for all discharges that flow through the outfall, and for monitoring reporting, and remedying water quality violations at Oak Orchard Creek. The Nation must be given notice of any proposed changes and at least 90 days to object or provide comment to any change in the discharge. The only reasonable alternative would be to hold all permit holders discharging through Outfall 001 jointly and severally liable for water quality violations in Oak Orchard Creek as well as monitoring for and remedying those violations.

DEC Response: No changes have been made in response to this comment.

See responses to comment 2B8 and 2B12. Although the flows will combine at the wet well, each industrial discharger's SPDES permit would contain effluent limitations specific to their discharge and be sampled for compliance to their permit prior to the wet well. In addition, Whole Effluent Toxicity (WET) testing will be performed on the combined effluent. The purpose of WET testing (TOGS 1.3.2) is to ensure that no pollutants are discharged to surface waters in amounts toxic to aquatic life.

2B15. **TSN Comment**: STAMP Sewer Works Inc. is Ineligible to Receive Permits until it Complies with New York's Transportation Corporations Law.

The law requires a Sewage Works Corporation to supply the residents of the towns in which it is located with sewage service.

STAMP Sewer Works Inc. is a "Sewage Works Corporation" as that term is defined in the New York State Transportation Corporations Law. The law specifies that "[a] sewage-works corporation shall supply each city, town, village or other municipal area or district wherein such corporation operates, and the inhabitants therein, with facilities or make provision for the collection, treatment and disposal of sewage at fair, reasonable and adequate rates."

The certificate of incorporation for STAMP Sewer Works Inc. confirms that the "Corporation's sewer system will be situated in both the Towns of Alabama, New York and Towns of Shelby, New York." Yet, there is no information in the Permit or the Notice

of Complete Application indicating that STAMP Sewer Works will supply these two towns or its residents with sewage services as required by law. To the contrary, the Notice of Complete Application states that the proposed facility will only potentially serve "future domestic users in the Town of Alabama" at some unspecified point in the future. Service for the Town of Shelby is not even mentioned in these documents.

DEC Response: No changes have been made in response to this comment.

DEC does not view Article 10 of the Transportation Corporations Law to prohibit a duly formed transportation corporation ["sewage disposal corporation" in 6 NYCRR 750-1.6(f)] from providing service to private companies that are located on separately-owned properties. In addition, Section 121 of the Transportation Corporation Law specifically only addresses the provision of services at "...fair, reasonable and adequate rates..." and does not create legal obligations to serve residential users where sewers do not exist. In the event that STAMP Sewer Works, Inc. proposes in the future to also serve surrounding residential users in the future, DEC would examine the specifics of the facts to determine if a permit modification would be appropriate.

2B16. TSN Comments: STAMP Sewage Works' failure to post a bond guaranteeing it will build the system and provide sewage service to the municipalities for five years precludes DEC from issuing the Permit.

New York law requires that the local governing bodies for the cities, towns, and villages in which a sewage works system is situated "shall require the posting of a performance bond" for the completion of construction of the facility. The law also requires that the "local governing body shall require a reasonable guaranty from the corporation that said corporation will continue to maintain and operate the system for a period of at least five years." DEC should deny the Permit because STAMP Sewerage Works has not provided guarantees that it will provide sewage service to the residents of Alabama and Shelby for at least five years.

DEC Response: The Department acknowledges that Transportation Law Section 119 addresses sewage disposal corporation guaranties to be required by the "local governing body". See also response to comment 2B15.

2B17. TSN Comment: DEC should not issue the Permit if STAMP Sewage Works was formed to provide public benefits to private industrial dischargers.

New York law provides certain benefits and rights to sewage works corporations, including the right to condemn private property in order to lay its sewage lines. The reason that sewage works corporations are given the right to condemn property to install sewage lines is because these sewage works corporations provide a public benefit by providing sewage services to the residents of the towns, municipalities, and villages where they operate. STAMP Sewage Works was not formed to serve the people of Alabama or Shelby. It was formed to serve the future industrial dischargers Genesee Economic Development Corporation is trying to entice to come and build on

the STAMP site. DEC cannot approve STAMP Sewage Works' plan to build a 9-mile discharge pipeline through private property and a national wildlife refuge, condemning private and public property, in order to build a discharge pipeline for private industrial dischargers.

DEC Response: See response to comment 2B15.

2B18. **TSN Comment**: The Permit Must be Put on the No Administrative Renewals List (NARL) to be Technically Reviewed Every Five Years.

Under New York State's Environmental Benefit Permit Strategy, "[a]ny permit for facilities that discharge into a 303(d) listed water... if... the permittee discharges a pollutant that is the cause of the impairment and... the effluent limit for that pollutant is not water quality based" must be placed on a high priority No Administrative Renewals List and receive a full technical review by the DEC's Division of Water every five years. Permits "which have the greatest potential for causing significant environmental harm" are also placed on the No Administrative Renewals List. An additional reason to place this permit on the NARL is because it is a Class 05 permit, which the Applicant intends to modify. For these reasons, the Permit must receive a full technical review every five years.

Additionally, the potential impacts of this Permit on the Nation and the Nation's concerns regarding this Permit and future permitting at the STAMP facility are further justification for requiring a full technical review of the Permit every five years.

DEC Response: No changes have been made in response to this comment.

The permit, a Class 05 (EPA Major), will be reviewed in accordance with procedures identified in TOGS 1.2.2, Administrative Procedures and the Environmental Benefit Permit Strategy for Individual SPDES Permits.

2B19. **TSN Comment**: DEC Should Not Issue the Permit Until Approvals are Received by Property Owners to Build Its Pipeline, Which Will Serve Private Industry, Across Private Property and Wetlands Concerns are Addressed.

Private property such as residences and farmland will be impacted by the proposed pipeline. However, the Permit and accompanying documents supporting the application do not provide information on whether and how impacts to private property are being minimized or managed during the construction of the pipeline. DEC must explain how rights to lay the pipeline on or near private property along the proposed route and at the discharge point were or will be acquired.

Allowing the construction of the pipeline along the proposed route could also "result in loss of water and flow" from wetlands "by accidental sinking," drying these water bodies up. DEC must explain whether there is a plan in place to avoid such deleterious impacts to the environment.

In order to proceed, the sewage treatment plant and associated 9-mile pipeline will likely be subject to judicial and permitting processes, as well as other forms of federal and local administrative review. These processes and reviews could require the applicant to find a new discharge location or pipeline route or necessitate alterations to the substance of the Permit such, as developing new effluent limits. The Applicant's own statements and other supporting documents indicate that §404 and § 401 permit will be required for this project. The approval of a § 404 permit would likely initiate a National Environmental Policy Act process, which the Nation intends to participate in fully in accord with its rights under federal law. These legal processes will provide DEC with "a more complete picture of the project's impact on water quality and provide the agency with information it needs to ensure compliance with the Clean Water Act" and to engage in reasonable decision-making as it considers the Permit.

DEC Response: No changes have been made in response to this comment.

6 NYCRR 750-2.2(b) states that "[t]he issuance of a SPDES permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining the assent of any other jurisdiction as required by law for the discharge authorized."

The majority of the forcemain that is outside of the STAMP property will be constructed in the road right-of-way (ROW) of NYS Route 63. Therefore, it should not have an impact on private property. GCEDC must obtain all the required easements for any crossings of private property, as noted above. Additionally, 6 NYCRR 750-2.1(j) states "[n]othing in a SPDES permit relieves the permittee from a requirement to obtain any other permits required by law."

The freshwater wetlands permit addresses issues related to construction within regulated adjacent wetland area. Additionally, the Article 24 Freshwater Wetland permit requires that the applicant obtain all other necessary permits and approvals prior to construction.

The U.S. Army Corps of Engineers determined that the project could be covered under Nationwide Permit 13 (Bank Stabilization) and that an individual §404 permit was not required. Therefore, an individual §401 Water Quality Certification was not required to be issued by the DEC.

2B20. **TSN Comment:** The Facility May Emit Foul Odors and the Pipeline May Leak. DEC Should Explain Its Plan to Ensure That Foul Odors from the Plant Do Not Hinder the Quality of Life of Surrounding Residents, Including Those of the Nation. DEC Should Explain Its Plan for Monitoring Pipeline Leaks Preventing Such Leaks.

In addition to the many water quality impacts described above, this facility has "the potential to emit foul odors" and its 9-mile pipeline has "the potential to leak." DEC should

not approve this project before these risks are dealt with. Because the WWTF is upstream from and directly adjacent to the Nation, it is particularly critical for the Nation that DEC ensure there are detailed plans with enforceable requirements to protect against leaks and foul odors.

Concern is also raised that the pipeline routing could lead to adverse effects to private property, wetlands, and the Iroquois National Wildlife Refuge.

DEC Response: No changes have been made in response to this comment.

See response to the response to comment at 2A1.

Also, the piping material in the force main will be PVC and HDPE, which are common piping materials, and will be installed and joined in accordance with manufacturer's requirements. Unauthorized discharges (spill, leaks, etc.) are not expected nor permitted; however, if they occur, DEC will investigate and require the permittee to remedy the situation in accordance with Part 750-2.1(e), 2.6 and 2.7, as applicable.

The Article 24 Freshwater Wetland Permit conditions will mitigate impacts to the wetland and adjacent area. The forcemain will be in the 100-foot adjacent area and will not be placed directly in wetland. The permit requires the forcemain to be constructed in certain restricted periods, so as not to have an impact to breeding birds and other wildlife species. Erosion and sediment control measures are required to be put in place prior to construction. Where the forcemain crosses streams, the applicant must follow the Inadvertent Release plan which will minimize any frac-outs. Should a frac-out occur, the plan includes specific remedial measures, including a vacuum truck onsite to conduct immediate cleanup.

Potential for impacts to the Iroquois National Wildlife Refuge were reviewed by the US Fish and Wildlife Service (USFWS) to address proposed encroachment onto the Iroquois National Wildlife Refuge by the proposed outfall pipe. USFWS issued a Notice of Availability of an Environmental Assessment and Compatibility Determination for the STAMP Right-of-Way Permit at Iroquois National Wildlife Refuge on January 16, 2020, to obtain comments. A Compatibility Determination and Finding of No Significant Impact was issued by USFWS on July 27, 2020. This authorized the outfall pipe to be constructed within the ROW of NYS Route 63 (Gravel Road) and through the Iroquois National Wildlife Refuge.

The question pertaining to private property is addressed in the response directly above to comment 2B19.

Part 3: Medina/Shelby (MS) Comments - Received on September 2, 2021

MS Comment 1: Orleans County has an extremely flat topography. Drainage and flooding concerns are always one of our main issues we are concerned with on a daily basis because of this. There are areas of Oak Orchard Creek that are within the 100-year flood plan where water is almost to the top of the stream bank such as Butts Park in

Medina. It does not take an extreme amount of water to flood this area. The Park is used on a daily basis for fishing, kayaking, wading, picnicking, and several other sporting events.

DEC Response: See response to comment 2B2.

MS Comment 2: Stream and stream bank erosion is another concern with this discharge. Orleans County already has a lot of areas along the river that are already eroding or have the potential to erode if the water level of the creek is to increase. Most of these areas are private residential properties downstream and municipal roads such as Oak Orchard River Road, which has already seen mass erosion and is now restricted to one lane. There is also major flooding and erosion concerns down at Point Breeze where Lake Ontario water levels are controlled by the International Joint Commission, determines the creek water level and restricts how fast the creek can drain into the lake. By increasing the water level in the creek unstable soils on the stream bank will become saturated and have a higher potential of eroding.

DEC Response: See response to comment 2B2.

MS Comment 3: Increasing the amount of water into the creek will also increase water velocity. This increase in velocity will stir up any loose sediments in the creek bottom and increase the turbidity of the water. Sediment is the number one pollutant in our creeks and is very difficult to recapture after it has already entered the water. Areas around the proposed discharge pipe will be subject to erosion depending on the velocity of the coming out of the pipe. Not only will the creek bank be subject to erosion but the creek bottom as well. This addition of water, depending on the evaluation of the outlet of the discharge pipe, will mix any sediments on the creek bottom into the water and increase the waters turbidity and erode the creek bank below the discharge pipe.

DEC Response: See response to comment 2B2.

MS Comment 4: Six million gallons of water a day may not seem to be much to some when looking at how much water flows Oak Orchard Creek. You must remember that the creek decreases in slope downstream from the proposed discharge. These are areas where the velocity of the water slow down and allows the silt and sediment to settle out of the water causing sedimentation in the creek. In these areas the amount of water coming in can be greater than the amount that is being discharged, resulting in higher than normal water level. The key thing to remember is that the amount of water will be discharged daily and can compound in areas downstream where water buildup can occur.

DEC Response: See response to comment 2B2.

MS Comment 5: Given that communication by GCEDC and the Town of Shelby in particular took place during COVID 2/2/20, 6/20, 7/20, 9/20, the general public and in particular the Village of Medina, which has a sizable investment in its own wastewater treatment facility that relies on discharge to Oak Orchard Creek, there is a heightened level of concern and anxiety within the communities and in Orleans County that this project lacked appropriate oversight given in particular the circumstances of the past year.

DEC Response: No change has been made in response to this comment.

DEC thoroughly reviewed the permit applications for this project irrespective of COVID and conducted all required public notice and public participation requirements including notifications to the counties, towns and Village. The Village of Medina provided written comments which are addressed in this document. The Department is aware of the Village of Medina's discharge to Oak Orchard Creek because DEC issued the Village's SPDES permit and provides oversight including inspections and review of Discharge Monitoring Reports for that facility.

MS Comment 6: The analysis provided by GCEDC regarding impact to Oak Orchard Creek was provided by Clark Patterson Lee, an engineering firm retained by GCEDC and we do not feel it is prudent or suitable for Medina and Shelby to rely on an analysis provided by a firm that does not represent our respective best interests.

DEC Response: No changes have been made in response to this comment.

A professional engineer must provide a fair and impartial assessment. This is required under the engineer's ethical responsibility by their professional engineer's license.

Part 4: EPA Comments – Received on January 11, 2022

EPA Comment 1: The proposed facility would have effluent limits of 0.5 mg/L and 4.2 lbs./day for Total Phosphorous. Oak Orchard Creek is on the New York State 303(d) list for phosphorous due to agriculture. The narrative standard for nutrients "None in amounts that result in the growths of algae, weeds and slimes that will impair the waters for their best usages" is the basis for the current impairment listing.

While these limits are more stringent than what the Great Lakes Water Quality Agreement would require for a tributary to Lake Ontario to which Oak Orchard Creek discharges, the fact sheet does not describe how these limits are protective of water quality standards in the immediate receiving water.

DEC Response: Please see response to Part 1.

EPA Comment 2: The proposed discharge is upstream of Glenwood Lake, where a numeric guidance value of 20 ug/L would be the applicable standard for Total Phosphorous for lakes and ponds. The fact sheet does not demonstrate how the concentration based on mass loading limits for Total Phosphorous are protective of the 20 ug/L guidance value for Total Phosphorous, which is treated as a numeric interpretation of the narrative nutrient criterion in New York State lakes, reservoirs, and ponds.

DEC Response: No changes have been made in response to this comment.

NYSDEC's numerical guidance value of 20 ug/l is not applicable to class C waters, including Oak Orchard Creek. It is applicable to class A, A-S, AA, AA-S, B with the

segment that has the letter "P" (ponds, lakes and reservoirs) appears in the Water Index Number, excluding Lake Champlain. See also DEC Response to the Part 1 comment.

EPA Comment 3: While the current draft permit proposed a discharge of almost 1 million gallons per day (MGD), the facility description mentions the design flow will be up to 6 MGD to accommodate future tenants of the STAMP facility. This facility discharges within the Great Lakes Basin, and Oak Orchard Creek is a tributary of Lake Ontario. Should any future expansions of the wastewater discharge result in additional loading of bioaccumulative chemicals of concern, such as mercury, dioxin, or polychlorinated biphenyls, such additional loading would require an antidegradation review due to the proposed lowering of water quality.

DEC Response: No changes were made in response to this comment.

See response to comment 2B10 and 2B12. Additionally, each new STAMP tenant desiring to discharge industrial process wastewater must first obtain its own individual SPDES permit for the discharge. During that permit application process, NYSDEC will review any applicable bioaccumulative chemicals of concern relevant to the proposed discharge will be reviewed such that water quality is protected.

EPA Comment 4: This draft permit includes an end of pipe limit of 0.7 ng/L for mercury. This is appropriate, as the facility is a proposed new Great Lakes discharger as described above, where limits for BCCs [bioaccumulative chemicals of concern], for new dischargers in particular, must be set at standards end of pipe, with no mixing, as required by the Great Lakes Water Quality Agreement regulations. In addition to mercury, facilities within the Great Lakes basin must be regulated for discharges of other bccs, such as dioxin and polychlorinated biphenyls. There is no reasonable potential analysis included for either dioxin or PCBs. There is a reference to a PCB minimization program, but there does not appear to be specific requirements or limitations.

DEC Response: No changes have been made in response to this comment.

The Department included an end of pipe limit for Mercury. This SPDES permit is for a sanitary discharge without the admixture of industrial wastewater, therefore, based on a reasonable potential analysis of a sanitary discharge with no industrial admixture, BCCs [bioaccumulative chemicals of concern] will not be a component of the discharge. As stated in the response to comment 4.4, each tenant will be required to submit a permit application and will receive an individual permit for its process wastewater. If BCCs are present in any of the future tenants' discharges, appropriate effluent limitations for BCCs will be included in the industrial individual permit(s).